

(b)(6)

FOIA Appeal, your letter dated September 23, 1999

Dear (b)(6) :

On July 13, 1999, you filed a Freedom of Information Act (FOIA) request for copies of two Exam Feedback Forms reviewing your performance while an examiner at NCUA. You stated the first form concerned your (B)(6) and was prepared by examiner-in-charge Patricia Johnson, and the second form concerned your (b)(6) and was prepared by examiner-in-charge Richard Handrick. Dianne Salva, NCUA's FOIA Officer, responded to your request on August 27, 1999. She was unable to locate either of the forms.

Examiner Feedback Forms are generally filled out by the examiner-in-charge (EIC), for examiners participating in a corporate credit union examination, upon completion of the exam. The participating examiners also fill out the form for the EIC. The EIC and participating examiner generally discuss the contents of the forms. The EIC then forwards the forms to the supervisory examiner, for information only. The supervisory examiners may use the forms to determine if participating examiners need additional exposure to certain areas covered in an examination. These forms are not used for appraisal purposes. The supervisory examiners do not generally keep these forms.

The Examiner Feedback Forms are not made a part of the examiner's personnel file. We contacted the two examiners-in-charge noted in your initial request, a third corporate examiner who you worked with, and the two corporate supervisory examiners. None of these corporate examiners recalled completing or reviewing either of the Examiner Feedback Forms that you requested. The date you noted for the first Form (b)(6) was only one week after you came on staff at NCUA. One of the corporate examiners noted that an Examiner Feedback Form would not normally be completed for a new examiner after only one week on staff. We also contacted staff in the Office of Corporate Credit Unions, the Office of Human Resources, the Equal Opportunity Programs Office and Office of General Counsel. Staff from these offices was unable to locate either of the Examiner Feedback Forms requested. It appears that one or both of the requested forms either: 1 - was never completed; or 2 - if completed was not permanently maintained.

Federal agencies are under a duty to conduct a reasonable search for records when a FOIA request is received. Patterson v. Internal Revenue Service, 56 F.3d 832, 841 (7th Cir. 1995). The question is not whether any documents responsive to the request might exist, but rather whether the search for any responsive documents was adequate. Steinberg v. United States Department of Justice, 23 F.3d 458 (D.C. Cir. 1994) quoting from Weisberg v. United States Department of Justice, 745 F.2d 1476 (D.C. Cir. 1984). We believe we have made an adequate

search for the two requested Examiner Feedback Forms.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court in the district where you reside, where your principle place of business is located, or in the District of Columbia.

Sincerely,

Robert M. Fenner
General Counsel

GC/HMU:bhs
SSIC 3212
99-0947